

Service Tax: Amounts paid by members to club: Service tax is on service not receipts

The appellant is in receipt of various amounts from its members and other persons for use of sporting, recreational and infrastructural facilities of the club in addition to entrance fees and periodical subscription amounting to Rs.4,88,76,021/- for the period from April 2005 to September 2009. These were sought to be taxed as 'club or association service'. Further, the caterers contracted by the appellant for delivery of food and beverages to members were required to pay contract fee, electricity charges and a miscellaneous amount - all at prefixed rates - amounting to Rs.30,24,000/- for the same period and which was sought to be taxed as 'support services of business or commerce'. There is also another demand related to recoveries of Rs.91, 574/- from staff members who were provided with accommodation and which Revenue wants to tax under 'Renting of immovable property service'. Appellant registered themselves as provider of 'Club or Association service' & paid ST of Rs.3, 93,301/- on the amount received from caterers.

Be that as it may, a Service Tax demand of Rs.60,81,315/- was confirmed against the appellant for rendering of 'Business support services' and 'Club or Association service' etc. along with penalty & interest.

The appellant is before the CESTAT.

The Member (T) writing for the Bench expressed his dismay about the proceedings initiated against the appellant and has lambasted the authorities for its follies.

These are the observations made -

- There is a disjointed approach in taxing the appellant.
- Tax demands should be characterized by a certainty which is found to be lacking in these proceedings; the attempt appears to have been to tax the receipts rather than demand taxes on taxable services.
- The impugned order has segregated the consideration received from different entities but has not quantified the tax liability under each head. Consequently, there is a demonstrated lack of clarity in the impugned order that casts doubts about its sustainability.
- The adjudicating authority, while determining that the entire receipts of the appellant were liable to tax, discovered that the consideration from different entities were attributable to multiple services. Impliedly, the nature of each transaction and its fitment into the various sub-clauses of section 65 (105) has not been ascertained.
- Undoubtedly, the catering contractors who are engaged to provide comestibles to the members are enabled to do so owing to the various facilities provided by the appellant. The amount of tax that has been paid on these receipts is affirmed as being in accordance with the Finance Act, 1994.

- Some of the staff employed by the appellant have been subjected to recovery of amounts towards accommodation provided to them. It is on record that appellant rendered tax on the amounts collected by them during 2007-08 and, taking note of this, the impugned order has determined a small amount as taxable for the subsequent period. The contractual privileges of an employer-employee relationship are outside the purview of service tax and this activity of the appellant does not come within the definition of the taxable service of 'renting of immovable property' sought to be saddled on the appellant in the impugned order. Accordingly, the demand under head 'renting of immovable property service' does not sustain.
- In re Sports Club of Gujarat 2013-TIOL-528-HC-AHM-ST, the High Court, has held section 65(25a) read with section 65 (105) (zzze) and section 66 of FA, 1994 to be ultra vires to the extent that it seeks to levy service tax on the transactions between a member and the club/association of which he is a member; the demand of tax on receipts from members cannot sustain.
- Contribution to common expenditure cannot be considered to be consideration for services that the club renders to members. The subscription is, therefore, not a consideration for a service and, hence, not taxable.

**Conclusion:**

The order is set aside to the extent that receipts from members and on recoveries from staff is sought to be taxed. The liability already paid is confirmed as due discharge of tax for rendering 'support service of business or commerce'. Interest, on delayed payment shall be determined and paid. Penalty u/s 78 is modified to the amount of tax that is confirmed. Penalty u/s 77 is upheld.